

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



Executive Secretary

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

DATE: January 20, 2005
DOCKET NO: T-04261A-04-0414
TO ALL PARTIES:

JAN 20 2005

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern.
The recommendation has been filed in the form of an Order on:

UNITED AMERICAN TECHNOLOGY, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 31, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

FEBRUARY 8 AND 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 UNITED AMERICAN TECHNOLOGY, INC. FOR
11 A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04261A-04-0414

DECISION NO. _____

ORDER

11 Open Meeting
12 February 8 and 9, 2005
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On June 3, 2004, United American Technology, Inc. ("Applicant" or "UAT") filed
19 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
20 provide competitive resold interexchange telecommunications services, except local exchange
21 services, within the State of Arizona.

22 2. Applicant is a switchless reseller that purchases telecommunications services from a
23 variety of carriers for resale to its customers.

24 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
25 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
26 of the Commission.

27 4. UAT has authority to transact business in the State of Arizona.

28 5. On October 14, 2004, Applicant filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2 6. On December 3, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions.

5 7. In the Staff Report, Staff stated that UAT provided unaudited financial statements for
6 the twelve months ending December 31, 2003, which list assets in excess of \$2.7 million, equity in
7 excess of \$2.7 million and a net income of \$258,097.

8 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
9 it has determined that UAT's fair value rate base ("FVRB") is zero and is not useful in a fair value
10 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
11 services are not set according to rate of return regulation. Staff has reviewed the rates to be charged
12 by the Applicant and believes they are just and reasonable as they are comparable to several long
13 distance carriers operating in Arizona and comparable to the rates the Applicant charges in other
14 jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant,
15 the FVRB information provided should not be given substantial weight in this analysis.

16 9. Staff believes that UAT has no market power and that the reasonableness of its rates
17 will be evaluated in a market with numerous competitors. In light of the competitive market in which
18 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
19 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
20 approve them.

21 10. Staff recommended approval of UAT's application subject to the following:

22 (a) The Applicant should be ordered to comply with all Commission rules, orders,
23 and other requirements relevant to the provision of intrastate telecommunications
24 service;

25 (b) The Applicant should be ordered to maintain its accounts and records as
26 required by the Commission;

27 (c) The Applicant should be ordered to file with the Commission all financial and
28 other reports that the Commission may require, and in a form and at such times as the
Commission may designate;

1 (d) The Applicant should be ordered to maintain on file with the Commission all
2 current tariffs and rates, and any service standards that the Commission may require;

3 (e) The Applicant should be ordered to comply with the Commission's rules and
4 modify its tariffs to conform to these rules if it is determined that there is a conflict
5 between the Applicant's tariffs and the Commission's rules;

6 (f) The Applicant should be ordered to cooperate with Commission investigations
7 including, but not limited to customer complaints;

8 (g) The Applicant should be ordered to participate in and contribute to the Arizona
9 Universal Service Fund, as required by the Commission;

10 (h) The Applicant should be ordered to notify the Commission immediately upon
11 changes to the Applicant's name, address or telephone number;

12 (i) The Applicant's interexchange service offerings should be classified as
13 competitive pursuant to A.A.C. R14-2-1108;

14 (j) The Applicant's maximum rates should be the maximum rates proposed by the
15 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
16 services should be the Applicant's total service long run incremental costs of
17 providing those services as set forth in A.A.C. R14-2-1109;

18 (k) In the event that the Applicant states only one rate in its proposed tariff for a
19 competitive service, the rate stated should be the effective (actual) price to be charged
20 for the service as well as the service's maximum rate; and

21 (l) In the event the Applicant requests to discontinue and/or abandon its service
22 area it must provide notice to both the Commission and its customers. Such notice(s)
23 shall be in accordance with A.A.C. R14-2-1107.¹

24 11. Staff further recommended that CNB's Certificate should be conditioned upon the
25 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
26 an Order in this matter, or 30 days prior to providing service, whichever comes first.

27 12. Based on UAT's tariff, which indicates that it collects from its customers an advance,
28 deposit, and/or prepayment, Staff also recommended the following:

(a) that UAT procure a performance bond equal to \$10,000. The minimum bond
amount of \$10,000 should be increased if at any time it would be insufficient to cover
advances, deposits, and/or prepayments collected from the Applicant's customers.
The bond amount should be increased in increments of \$5,000. This increase should

¹ Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of
compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of
service and/or abandonment of its service area.

1 occur when the total amount of the advances, deposits, and prepayments is within
2 \$1,000 of the bond amount;

3 (b) that UAT docket proof of the performance bond within 365 days of the
4 effective date of an Order in this matter or 30 days prior to the provision of service,
5 whichever comes first, which shall remain in effect until further order of the
6 Commission.

7 (c) that, if at some time in the future, UAT does not collect from its customers any
8 advances, prepayments or deposits, that UAT should be allowed to file with the
9 Commission a request for cancellation of its established performance bond, which
10 references the decision in this docket. Staff stated that after Staff review of such
11 filing, Staff will forward its recommendation on the matter to the Commission for a
12 Decision.

13 13. Staff recommended that if the Applicant fails to meet the timeframes outlined in
14 Findings of Fact Nos. 11 and 12, that UAT's Certificate should become null and void without further
15 Order of the Commission, and that no time extensions for compliance should be granted.

16 14. The rates proposed by this filing are for competitive services.

17 15. Staff's recommendations as set forth herein are reasonable.

18 16. UAT's fair value rate base is zero.

19 CONCLUSIONS OF LAW

20 1. Applicant is a public service corporation within the meaning of Article XV of the
21 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

22 2. The Commission has jurisdiction over Applicant and the subject matter of the
23 application.

24 3. Notice of the application was given in accordance with the law.

25 4. Applicant's provision of resold interexchange telecommunications services is in the
26 public interest.

27 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
28 providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact No. 8, 9, 10, 11, 12, and 13 should be
adopted.

7. UAT's fair value rate base is not useful in determining just and reasonable rates for the

1 competitive services it proposes to provide to Arizona customers.

2 8. UAT's rates, as they appear in its proposed tariffs, are just and reasonable and should
3 be approved.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the application of United American Technology, Inc. for
6 a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
7 telecommunications services, except local exchange services, is hereby granted, conditioned upon its
8 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11
9 and 12 above.

10 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
11 8, 9, 10, 11, 12 and 13 above are hereby adopted.

12 IT IS FURTHER ORDERED that United American Technology, Inc. shall comply with the
13 adopted Staff recommendations as set forth in Findings of Fact Nos. 10, 11 and 12 above.

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IT IS FURTHER ORDERED that if United American Technology, Inc. fails to meet the timeframes outlined in Findings of Fact Nos. 11 and 12 above that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

1 SERVICE LIST FOR:

UNITED AMERICAN TECHNOLOGY, INC.

2 DOCKET NO.:

T-04261A-04-0414

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